

ORIGINAL



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MAY 30 2003 MR
AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CURAFLO TECHNOLOGIES INC , a British
Columbia company,

Plaintiff,

v

ACE DURAFLO SYSTEMS, LLC, a Nevada
limited liability company,

Defendant

CV 03-1214
COMPLAINT

Plaintiff, CuraFlo Technologies Inc ("CuraFlo"), for its complaint against Defendant,
Ace DuraFlo Systems, LLC ("Ace"), states and alleges as follows

JURISDICTION AND VENUE

1 This is an action for declaratory judgment under 28 U S C § 2201 CuraFlo
20 seeks a declaratory judgment that neither it nor its licensees infringe Ace's trademarks This
21 Court has subject matter jurisdiction pursuant to 28 U S C §§ 1338(a) and 2201 Venue is
22 proper in this district under 28 U S C § 1391(b)

PARTIES

24 2 CuraFlo is a British Columbia corporation having its principal office at 202 -
25 6200 Darnley Street, Burnaby, British Columbia V5B 3B1.

3 Upon information and belief, Ace is a Nevada limited liability company with
its principal place of business at 711 Kimberly Avenue, Suite 100, Placentia,
California 92870 Ace has sufficient contacts within this district to subject it to the personal
jurisdiction of the Court

FACTUAL BACKGROUND

4 CuraFlo is engaged in the business of cleaning and repairing piping systems

5 Ace is engaged in the business of cleaning and repairing piping systems

6 On information and belief, Ace is the licensee and/or owner of the U S
Trademark Registration No 2,484,383, for the mark ACE DURAFLO

7 Ace claims common law rights in the mark DURAFLO

8 On April 24, 2003 and on other occasions, Ace, through its counsel, has sent
CuraFlo's licensee and counsel correspondence alleging that CuraFlo's use of its mark
CURAFLO infringes Ace's ACE DURAFLO and DURAFLO marks Ace has further
demanded that CURAFLO "immediately terminate any and all uses of the mark CURAFLO
or any similar marks "

COUNT I TRADEMARK NONINFRINGEMENT (Lanham Act)

9 Plaintiff realleges each and every allegation set forth in paragraphs 1-8 above
as if fully set forth herein

10 Ace has asserted and continues to assert that CURAFLO infringes the ACE
DURAFLO and DURAFLO trademarks.

11 There is an actual case or controversy between CuraFlo and Ace concerning
the alleged infringement of Ace's trademarks in that Ace, through its counsel, has accused
CuraFlo of infringing the trademarks

12 Ace's allegations of trademark infringement are without merit

13 Pursuant to 28 U S C §§ 2201 and 1338(a), CuraFlo is entitled to a judgment
14 declaring that it does not infringe any trademark held by Ace

3 **COUNT II**
4 **REGISTRATION IMPROPERLY REGISTERED**

14 Plaintiff realleges each and every allegation set forth in paragraphs 1-13 above
15 as if fully set forth herein

15 U S Trademark Registration No 2,484,383 was improperly issued by the
16 Patent and Trademark Office

16 Pursuant to 15 U S C § 1119, CuraFlo is entitled to an order directing the
17 Commissioner of Patents and Trademarks to cancel the registration of Ace's U S Trademark
18 Registration No 2,484,383

WHEREFORE, Plaintiff CuraFlo respectfully requests the following relief

A Judgment declaring that CuraFlo does not infringe the ACE DURAFLO,
19 DURAFLO, or any related marks held by Ace,

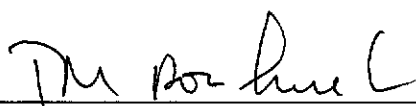
B An order under 15 U S C § 1119 to the Commissioner of Patents and
20 Trademarks canceling the registration of Ace's U S Trademark Registration No 2,484,383,

C An award to CuraFlo of its costs and reasonable attorneys' fees, and

D An award to CuraFlo of such other and further relief as the Court may deem
21 just and proper

Dated this 30 day of May, 2003

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Gregory F Wesner, WSBA No 30,241
Thomas M Donahue, Jr , WSBA No 23,313

Attorneys for Plaintiff
CURAFLO TECHNOLOGIES INC

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I (a) PLAINTIFFS

Curaflo Technologies Inc

DEFENDANTS

Ace Duraflow Systems, LLC

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF **British Columbia**
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF **SEATTLE** OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Gregory F. Wesner
Thomas M. Donahue, Jr.
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206 695 1738

ATTORNEYS (IF KNOWN)

FILED
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ENTERED
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MAY 30 2003
MR
AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emp'l Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395if) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW(405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Declaratory Judgment under 28 U.S.C. § 2201

VII. REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

☒ To be determined at trial

CHECK YES only if demanded in complaint

JURY DEMAND

☐ YES ☒ NO**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

May 30, 2003

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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